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June 1, 2020

MEMO ENDORSED

By ECF

The Honorable Judge Katherine Polk Failla
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

RE: *Tucker v. Ulta Beauty, Inc.*
Case No. 19-cv-09845 (KPF)(DCF)

Dear Judge Failla:

We represent defendant Ulta Salon, Cosmetics & Fragrance, Inc. (“Defendant”), incorrectly named as “Ulta Beauty, Inc.,” in the above-referenced action. We write, with Plaintiff’s consent, to respectfully request a stay of the proceedings, including a stay of Defendant’s motion to dismiss briefing schedule pending the ruling of the Second Circuit Court of Appeals’ review of rulings on nearly-identical motions to dismiss.

By way of brief background, within the last month, courts in the Southern District of New York have granted motions to dismiss other gift card cases involving substantially identical complaints. (*See Yovanny Dominguez v. Banana Republic, LLC, U.S.D.C. S.D.N.Y. Case No. 1:19-cv-10171 (GHW)* (“*Banana Republic*”); *James Murphy v. Kohl’s Department Stores, Inc., U.S.D.C. S.D.N.Y. Case No. 1:19-09921 (GHW)* (“*Kohl’s*”). Plaintiffs in those cases exercised their right to appeal from those rulings, and the Second Circuit has recently ordered an expedited briefing schedule in certain of those cases, indicating some intention that the Second Circuit intends to address the same issues at the core of the pending motion to dismiss. Although we understand that the plaintiffs/appellants in those cases intend to ask the Second Circuit to sever those appeals and withdraw the expedited briefing schedules, the Second Circuit’s intent to rule on these same issues is inevitable and possibly imminent.

As a result, Defendant seeks, with Plaintiff’s consent, a comprehensive stay of the proceedings in this action (including the briefing schedule that would require Defendant’s reply brief be filed by June 5, 2020) pending the Second Circuit’s rulings on the appeals. A stay would conserve judicial resources and permit this Court to proceed at a future date with the benefit of guidance from the Court of Appeals.

Thank you for Your Honor’s consideration of this request.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: /s/ Jamie Haar
Jamie Haar

cc: David Raizman, Esq.
All counsel of record (by ECF)

Application GRANTED. This matter is hereby STAYED until further order of the Court. The parties are ORDERED to file a joint letter regarding proposed next steps in this matter within one week of the issuance of a decision by the United States Court of Appeals for the Second Circuit in the cases identified in this letter.

Dated: June 2, 2020
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE